

# **NARUC Statement on Governance Issues Pertaining to Used Nuclear Fuel Management**

**Presented by Brian O'Connell, P.E.  
Before the  
Blue Ribbon Commission on America's Nuclear Future  
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When Commissioner Greg White, representing the National Association of Regulatory Utility Commissioners (NARUC,) spoke before the Commission at its meeting on May 25, 2010 he covered a broad range of issues pertaining to what has been labeled in legislative and executive descriptions as the civilian radioactive waste management program under the Department of Energy. The Office of Civilian Radioactive Waste Management (OCRWM) was established by the Nuclear Waste Policy Act of 1982 to manage the waste program. I would like to supplement certain of the points Commissioner raised as the Commission considers "governance" issues.

Commissioner White made clear our view that "the Nuclear Waste Fund is a mess" and needs fundamental overhaul if it or a similar fund is to be used to finance in some manner in whatever nuclear waste disposition strategy the Commission recommends to the Administration and Congress. He was pleased by the recognition of that point by one of the Commission members who said, "We hear you." Financing used fuel management needs to be part and parcel with any proposed consideration of an organizational change. The NWPA even anticipated (Section 303) that there might be other alternative means of financing and managing the program and DOE submitted reports evaluating those alternatives in 1984 and 2001.

It appears that the Obama Administration has effectively disbanded OCRWM and that the intention of the Secretary of Energy, as part of the direction to terminate the Yucca Mountain repository project, is to reassign any residual functions previously managed within OCRWM elsewhere within DOE. It was also the intent, as we understand it, that the revised radioactive waste program would be managed within the Office of Nuclear Energy. We read the President's Memorandum to the Secretary as calling for this Commission to consider financial and management issues of each alternative for storage, processing and disposal of civilian and defense nuclear waste.

So, if OCRWM is *de facto* removed from the waste program management, then there will be a new management scheme in whatever disposal strategy is recommended by the Commission and which is presumably to be accepted by the Secretary and the President as well as the Congress.<sup>1</sup> So, if we are starting over it is fair to ask should the federal government play a more

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<sup>1</sup> As we view it, the NWPA as amended in 1987 and 2002 narrows the disposal policy as geologic repository at Yucca Mountain, subject to NRC authorization, and to do otherwise requires legislative concurrence. This issue is presently before the NRC for resolution.

limited role or should DOE be the lead agency for implementation. There were even some different views expressed in the September 1 meeting of the Disposal Subcommittee over consolidating regulatory responsibilities now split between the NRC and EPA.

We recommend a review of the 2001 DOE report on *Alternative Means of Financing and Managing the Civilian Radioactive Waste Management Program*. The report was quite direct in describing the “dysfunctional” situation with the Nuclear Waste Fund and made the appeal that at least would protect the annual fee revenue stream—intended solely for waste disposal—from the habitual diversion for unrelated uses by Congress. A modest proposal to “reclassify” the fees as offsetting collections in 2005 and 2006 was considered in Congress, but the common understanding on Capitol Hill was that no legislation that would help the Yucca Mountain repository would pass the Senate, so the House stopped trying. It was our view that Congress had become so accustomed to using the fee revenue for other purposes that, whether members of Congress were for or against Yucca Mountain they were not about to stop the diversion of the “trust” fund. Nor was there any particular concern that with the lawsuits leading to damage awards stemming from DOE’s breach of contracts on disposal that the taxpayers liability continued to mount.

We have reviewed the legislative proposal of Senator Voinovich, for “United States Nuclear Fuel Management Corporation Establishment Act,” calling for creation of a “FedCorp” to manage all options of the nuclear fuel cycle. It is quite comprehensive and has many attractive features. One that we especially like is that the United States Nuclear Fuel Management Corporation Fund the bill would create is taken out of the government and would not be subject to appropriations. While it may be realistic, we object to the provision that transfer of the purported balance in the present Nuclear Waste Fund (presently reported to be \$25 billion) to the new Capital Reserve Account as an “unfunded asset.” That continues to make it seem doubtful that the \$25 billion “corpus” Congress borrowed will ever be returned. The bill also sets up an NFMF operating account into which the fee revenue would be deposited and later drawn out by the FedCorp as the FedCorp determines is needed.

The 2003 National Research Council report *One Step at a Time* recommends that an independent technical oversight group be set up (such as the NWTRB) and a stakeholder advisory board. The advisory board could help improve public trust as well as scrutinize the financial soundness of the disposition strategy.

The FedCorp bill compares well with the Nuclear Waste Management Organization (NWMO) in Canada set up by federal design and law, but managed by the nuclear power plant owners. The NWMO has the authority to determine fee requirements, collect, invest and disburse funds as the organization determines to be needed. Several European countries have similar organizations.

Without knowing yet what alternative fuel cycle strategy will be chosen and whether implementation would proceed better than in the Yucca Mountain experiment, some pessimists may be fearful that similar results may beset the new strategy and that all that may change is that a new organization retraces a similar, politicized path. We don't think it need be that way. We have hope that Commission will present a compelling argument for creating a safe, fair and unpoliticized path to success for the timely and certain disposition of nuclear waste that has no further economic value.

What we need to convince all parties is that whichever organizational entity is responsible for waste management and disposition will be choosing a safe and appropriate path forward that the public and especially those in vicinity of the proposed nuclear facilities can have confidence in. Whether it is the federal government or a new specially created organization like a FedCorp, the organizations involved—be it in planning, regulating or implementation—need to endeavor to earn the public trust. Further, there should an openness to the site search and develop as well as receptivity to providing incentives to the host communities that reflects that there are burdens from certain aspects of these facilities that can be mitigated to some degree with funds collected from users of nuclear power, as was provided for but never seriously explored under Subtitle F of NWPA. Other federal projects have invested in community infrastructure that can be shown to be burdened by the new project.

Since we don't know at this stage what disposal strategy the Commission will recommend, it is unlikely that the Commission will be able to venture to put a price tag on each alternative. Therefore, it seems unlikely that Co-chair Hamilton will be able to hold to his statement at the first meeting that the Commission would review and determine the fee requirements. We suggest instead a postulation that the current one-mill fee is adequate and should continue to be reviewed annually for adequacy (in more realistic methodology than has been the practice at DOE.)

Of greater importance, we feel, would be for the Commission to urge upon Congress is to turn the fee determination, collection, investment and disbursement over to the waste management organization, subject to whatever audits and reporting Congress may require. Further, the Commission should include in its recommendation the challenge to Congress to commit to a Nuclear Waste Fund "Repayment Plan" that would return the \$25 billion it borrowed from the Fund corpus. It could be repaid in annual amounts. It would be a sign of commitment from Congress that the disposal program is real and it must be taken seriously.

We close with a statement from the 2001 National Research Council report, *Disposition of High-Level Waste and Spent Nuclear Fuel*:

**"Today the biggest challenges to waste disposition are societal."**